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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,268	07/01/2003	Steven S. Heflin	N2000-7000	4092
37462 7590 02/26/2008 LOWRIE, LANDO & ANASTAS, LLP ONE MAIN STREET, SUITE 1100 CAMBRIDGE, MA 02142				
EXAMINER				
AN, IG TAI				
ART UNIT		PAPER NUMBER		
3627				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ll-a.com  
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**Office Action Summary****Application No.**

10/612,268

**Applicant(s)**

HEFLIN, STEVEN S.

**Examiner**

IG TAI AN

**Art Unit**

4127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

This communication is a First Office Action Non-Final Rejection on the merits.

Claims 1 – 44 are currently pending and have been considered below.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 - 6, 9, 24 - 25, 28, 36 - 37, 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5, 24, and 36 recite the limitation "the preparation status" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 6, 25 and 28 depend from claims 5, 24, and 36. Therefore, claims 6, 25 and 28 carry same deficiency.

Claims 9, 28, and 40 recite "from said at least one of said vendor" in Claims 9, 28, and 40, line 1. It is not clear what "from said" refers to.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 1 - 2, 7 - 11, 14 - 15, 17 - 18, 20 - 21, 26 - 30, 32 - 33, and 38 - 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana et al (US 20020174015) in view of Cotter (US4797818).**

**As per Claims 1, 14, 17, 20 and 32**, Kuwana et al. (hereinafter Kuwana) teaches a method, system and medium for managing the delivery of restaurant related services from a plurality of unaffiliated restaurants (See Figure 1; via delivery of restaurant food orders), comprising the steps of:

storing at least one customer record at a location accessible over said network, said customer record including at least one of dietary restriction information, billing information (See paragraphs 55 and 59; via ingredient information DB contains dish-set information and dish set information contains price of the ingredient which is directly related to the price of dish, and the calories of the ingredients);

storing a plurality of menu item records at a location accessible over the network, said menu items associated with a particular restaurant and available for purchase over said network (See paragraphs 55 59, and 60; via dish-set information in the ingredient information DB, menu is created and displayed to the client of user); and

enabling access to a presentation of said menu items over said network to a customer, said customer being associated with at least one of said stored customer records (See paragraphs 60, and 63; via customer can access the menu and order the item or order based on the previous order history); and

providing an inventory of ingredients needed to make said menu items, said inventory stored at a location accessible over said network (See paragraph 58 and 72; via ordering ingredients which is required to make dish).

However, Kuwana fails to explicitly disclose customer record including a customer identifier and customer location information.

Cotter discloses a food order/delivery system having customer record including a customer identifier and customer location information (See Figure #3; via receives and stores customer information for order including customer identifier (phone number) and the location information (address)).

Therefore, from this teaching of Cotter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana to include customer identifier and location information as taught by Cotter to easily identify the customer and delivery destination.

**As per Claims 2, 21, and 33**, Kuwana discloses comprising the further step of: accepting menu selections from said customer, said selection using said customer record (See paragraph 63; via accept order from the customer using customer order history).

**As per Claims 7, 15, 26, and 38,** Kuwana discloses programmatically updating the inventory of ingredients to reflect the items used in the preparation of said selected menu items (See paragraph 72; updating needed ingredient information to restock ingredients).

**As per Claims 8, 27 and 39,** Kuwana discloses storing records of at least one vendor available to sell ingredients used in said selected menu items (See paragraph 58; via ingredient seller inputs the ingredient information and the price to the ingredient information Database).

**As per Claims 9, 28 and 40,** Kuwana discloses programmatically placing an order from said at least one of said vendor in response to a diminished level of a menu item ingredient (See paragraph 72; via dish provider periodically put ingredient order to the ingredient sellers).

**As per Claims 10, 29, and 41,** Kuwana discloses wherein said menu items are associated with preparation options chosen by authorized individuals at the restaurant associated with said menu items (See paragraph 59 and 60; via dish provider may create dish menu).

**As per Claims 11, 30 and 42,** Kuwana discloses wherein said preparation options include at least one of cooking time options and additional ingredient options (See paragraph 60; via customization of dish).

**As per Claim 18,** Kuwana discloses wherein said electronics version of said menu items includes dietary information (See paragraph 59; via dish includes information on calories of the ingredients).

**6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana and Cotter in view of Williams III (US 5704350).**

As per Claim 19, Kuwana and Cotter's combination discloses all the elements of the claimed invention, but fails to explicitly disclose wherein said dietary restriction information is cross- referenced with said customer selection and a warning displayed to said customer regarding ingredients from said dietary restriction information that are present in said customer selection.

Williams III discloses a nutritional micro computer and method that having disclose wherein said dietary restriction information is cross- referenced with said customer selection and a warning displayed to said customer regarding ingredients from said dietary restriction information that are present in said customer selection (See column 13 lines 20 – 34; via total calories of the selected dishes are shown and if the total calories are over the daily recommended value, then generate audible or display warning message).

Therefore, from this teaching of Williams III, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include warning system based on the total calories of foods as taught by Williams III to help customer to keep healthy diet.

**7. Claims 3 - 4, 16, 22 - 23, and 34 - 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana in view of Cotter and in further view of Burton (US 20030004747).**

**As per Claims 3, 16, 22, and 34,** Kuwana and Cotter's combination teaches all the elements of the claimed invention, but fails to explicitly disclose said delivery service accessing delivery information over said network prior to delivering the selected menu items to the ordering customer.

Burton discloses a delivery control system said delivery service accessing delivery information over said network prior to delivering the selected menu items to the ordering customer (See paragraph 18 and 19; via delivery information is updated for further delivery).

Therefore, from this teaching of Burton, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include delivery service has ability access delivery information as taught by Burton to optimize the delivery process.

**As per Claims 4, 23 and 35,** Kuwana and Cotter's combination discloses all the claimed invention but fails to explicitly disclose providing updated delivery status information from the delivery service over said network to the ordering customer.

Burton discloses a delivery control system providing updated delivery status information from the delivery service over said network to the ordering customer (See paragraph 20; via customer is provided with updated delivery information)



Therefore, from this teaching of Burton, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include customer has ability access delivery status information as taught by Burton to help customer to estimate the delivery time.

**8. Claims 5, 24 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana in view of Cotter and in further view of Mayer et al.(hereinafter Mayer) (US 20020026364).**

**As per Claims 5, 24 and 35**, Kuwana and Cotter's combination discloses all the elements of claimed invention but fails to explicitly disclose providing updated information regarding the preparation status of said selected menu items to the ordering customer.

Mayer discloses an electronic waiter system providing updated information regarding the preparation status of said selected menu items to the ordering customer (See paragraph 34; via when order is filled the customer is notified).

Therefore, from this teaching of Mayer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include notifying customer when order is filled as taught by Mayer et al. to help customer to estimate the delivery time.

**9. Claims 6, 25 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana in view of Cotter and in further view of Mayer and in further view of Examiner's Official Notice.**

**As per Claims 6, 25, 37,** Kuwana and Cotter's combination and Mayer's combination discloses the claimed invention but is silent regarding providing said updated preparation status information to said delivery service over said network. Examiner takes Official Notice that is old and well known in the art of delivering food to provide status information of food preparation. Evidence of this is provided by the following example of a pizza delivery. The pizza deliverer will be notified as soon as the pizza is ready to be delivered so they can deliver the pizza to the customers as soon as possible. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide the food order and deliver system of Kuwana and Cotter and Mayer's combination with the feature of notifying the deliverer about the food preparation status as taught by Examiner's Official Notice, in order to deliver the food as soon as the food is ready so that customer can be more satisfied with ordered food.

**10. Claims 12, 31, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana and Cotter in view of Camaisa et al. (hereinafter Camaisa) (US 5845263).**

**As per Claims 12, 31, and 43,** Kuwana and Cotter's combination discloses all the elements of the claimed invention but fails to explicitly disclose providing at a location accessible to at least one of said plurality of restaurants, a shadow electronic

device, said shadow electronic device storing current copies of said customer records, plurality of menu item records associated with said at least one of said plurality of restaurants, the inventory of ingredients and said menu selections; and using said shadow electronic device to deliver restaurant services to customers of said at least one restaurant in the event of a disruption in said network.

Camaisa discloses a interactive visual ordering system providing at a location accessible to at least one of said plurality of restaurants, a shadow electronic device, said shadow electronic device storing current copies of said customer records, plurality of menu item records associated with said at least one of said plurality of restaurants, the inventory of ingredients and said menu selections; and using said shadow electronic device to deliver restaurant services to customers of said at least one restaurant in the event of a disruption in said network (See column 9 line 66 – column 10 line 6; via database with backup function).

Therefore, from this teaching of Camaisa, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include database backup function as taught by Camaisa to prevent loss of customer order information when the system fails.

**11. Claims 13 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwana and Cotter in view of Yang (US 7110958).**

**As per Claims 13 and 44**, Kuwana and Cotter's combination discloses all the elements of the claimed invention but fails to explicitly disclose wherein access to the presentation of said menu items is limited based upon the location of the customer.

Yang discloses a method and apparatus for mobile pickup stations having wherein access to the presentation of said menu items is limited based upon the location of the customer (See column 1 lines 27 – 32; via product on delivery service is done within certain delivery range).

Therefore, from this teaching of Yang, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify food order and delivery system of Kuwana and Cotter's combination to include delivery service provided within certain delivery range as taught by Yang to efficiently deliver product to customer and prevent loss from excess delivery distance.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Haken (US20030125963) discloses wireless interactive rendezvous system for delivering goods and services.

Rose (US20020016726) discloses package delivery systems and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IG TAI AN whose telephone number is (571)270-5110. The examiner can normally be reached on Monday - Thursday from 9:30 AM to 5 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-270-3033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ITA

/Lynda Jasmin/

Supervisory Patent Examiner, Art Unit 4127